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FM AMEMBASSY CARACAS

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C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 000363

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E.O. 12958: DECL: 02/14/2017

TAGS: PHUM KJUS VE

SUBJECT: SUPREME COURT JUSTICE: "THERE IS NO JUSTICE IN VENEZUELA"

REF: A. CARACAS 243

1B. 05 CARACAS 03350

1C. CARACAS 147

1D. 05 CARACAS 00813

1E. 02 CARACAS 02558

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Classified By: POLITICAL COUNSELOR ROBERT DOWNES FOR 1.4 (D)

Summary

11. (C) Perhaps the sole remaining opposition-leaning Supreme Court Justice Blanca Rosa Marmol bluntly told Poloff during a February 13 meeting that justice no longer existed in Venezuela, as the BRV had fired, intimidated, or co-opted once independent judges, and packed the judiciary with sympathetic, and often unqualified, magistrates. Marmol also recounted instances of interference in political cases, and indicated things would only worsen under Luisa Estella Morales, Chavez' hand-picked Chief Justice. Marmol urged the USG to lobby the region to pressure Chavez to respect judicial autonomy. She presents an accurate description of Chavez' systematic and successful destruction of judicial independence within Venezuela. End Summary.

Who is Blanca Rosa Marmol?

12. (U) Supreme Tribunal of Justice (TSJ) Justice Blanca Rosa Marmol discussed the recent election of Chief Justice Luisa Estella Morales (septel) and painted a grim picture of Venezuelan justice during a February 13 meeting with Poloff. Marmol has been a judge for 31 years, the last seven of which have been spent on the high court. Marmol, a member of the TSJ Penal Chamber, is perhaps the sole remaining

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opposition-leaning justices on the TSJ, although the Chavistas have tried to remove her twice for ruling in favor of a Sumate appeal related to the conspiracy case against the electoral NGO's leaders for accepting money from the National Endowment for Democracy. She speculated that her survival thus far is due to her strong record as a public defender, judge, and law professor. Although she is eligible to retire, she told Poloff she would stay on the court as long

as possible to fight for justice and the opposition. She said she is usually treated with respect by her fellow TSJ magistrates, although the Constitutional Chamber did try to summon her once to question her Sumate ruling.

"No Justice"

¶3. (C) Marmol frequently stressed that "justice does not exist in Venezuela." After the 2004 TSJ Law, which expanded the number of TSJ justices from 20 to 32 and gave the National Assembly power to remove justices, Marmol said the mood in the TSJ changed. What was once a collegial atmosphere became very tense as pro-Chavez justices began keeping tabs on their fellow justices, looking for the slightest evidence of less than full loyalty to Chavez. Marmol learned that a particularly radical Chavista justice had demanded to review her trash everyday before it was disposed. (Note: Stories of intense surveillance are not new. During a June 2006 meeting, then-Penal Chamber President Eladio Aponte implied to Poloff that his office was bugged by BRV authorities.)

¶4. (C) Marmol also explained that TSJ internal elections were changed from a secret ballot to a public vote in 2004, when radical Chavistas were put in as chamber presidents. This year's election procedures changed again when some justices demanded that the names of those who abstained from voting be announced. Marmol said it was clear that Chief Justice Luisa Estella Morales had been hand-picked by Chavez when outgoing Chief Justice Omar Mora announced that he was deferring to Morales, although he claimed to have 23 of the 32 justices' votes (septel). In addition, she noted that neither the name nor the resume of the candidate to head the Executive Directorate of the Magistracy (DEM) (the board that administers the lower court system) had been circulated before the vote.

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Gutting the Justice System

¶5. (C) Marmol stated that the Chavistas have completely gutted the court system of any independent judges or employees. Within the TSJ several hundred personnel, including justices, legal assistants, and lawyers, were forced to retire. Marmol thought the TSJ took this route to avoid the potential scandal of mass firings. In the lower courts, Marmol said judges have been either fired, intimidated, or co-opted, and more Chavez-oriented magistrates were brought in to fill out the ranks. Marmol told Poloff she has seen letters sent to fired judges that hint at political motivations for their dismissal. The extent of the changes became especially evident for Marmol during Mora's February address (Ref A) when she looked out and, despite her 31 years in the judicial system, recognized none of the assembled judges.

¶6. (C) Not only are judges more politicized, but they also seem to be less qualified, Marmol said. Although former Chief Justice Mora celebrated the fact that almost 90% of the judges are now tenured, Marmol questioned the quality of their training, saying that many of the newer judges she has encountered don't appear to have the legal knowledge necessary for the positions they occupy. (Human Rights Watch and domestic human rights NGOs Provea and Cofavic have made similar observations to us.) She also accused many judges, including those in the TSJ, of often making decisions based on the financial benefits they can reap, a phenomenon she alleged was less prevalent in the past.

What to expect this year

¶7. (C) Marmol said the BRV plans to revise the 2004 TSJ Law to reduce the number of justices from 32 to 21 in order to reduce power rivalries between the justices. Marmol claimed that many of the pre-2004 justices feel threatened by their post-2004 counterparts and want them removed. Other BRV officials are reportedly upset with the newer group, too, according to Marmol. Monica Fernandez, a former judge who maintains contacts in the judicial system, had previously predicted to Poloff that many of the older judges would probably go because they had ties to former Chavez-mentor-turned-nemesis Luis Miquilena. While there are rumors that Mora might seek retirement, Marmol thought he might stay on to continue profiting from corruption opportunities. Ex-Penal Chamber President Aponte Aponte, appointed after 2004, may be targeted for removal. A Chavista group has reportedly lobbied for his dismissal for overturning the convictions of a Bolivar State mayor and a drug trafficker.

Marmol Dishes on Political Cases

¶8. (C) To further emphasize the degree of politicization in the courts, Marmol shared some interesting insights into some political cases that went before the TSJ in 2006, including those of the political prisoners that Post cited for the 2006 Human Rights Report. For example, she called ex-Yaracuy Governor Eduardo Lapi a political prisoner of his successor Governor Carlos Gimenez. Marmol said Gimenez was responsible for Lapi's prolonged pre-trial detention, although the evidence and treatment of other officials with pending corruption cases does not support his continued incarceration (Ref B). When Lapi's lawyer filed an appeal with the TSJ to have the defendant tried in liberty and to request a new trial venue, Marmol revealed that Gimenez was at the TSJ everyday lobbying the justices to reject both petitions. Gimenez was ultimately successful in maintaining Lapi's detention at a medical facility where he is undergoing treatment for stomach problems, and the trial was eventually moved to Lara State.

¶9. (C) Marmol also predicted that the other political prisoners--former police commissioners Ivan Simonovis, Henry Vivas, Lazaro Forero, and eight Caracas Metropolitan police officers--will never be released from prison. The defendants petitioned the TSJ in late 2006 to reverse the judge's decision to continue their incarceration in violation of Venezuelan law calling for defendants to be released from

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incarceration for the duration of the trial (Ref C). They have been detained for more than two years. Marmol also said that the eight generals whose acquittal for their role in the April 2002 coup was overturned in 2005 are now being tried in a lower level court (Refs D and E). Marmol speculated that the BRV is pursuing the case at a lower level because it controls the judges, however, the BRV may also be trying to avoid negative publicity.

The World Needs To Know

¶10. (C) Marmol urged the USG to publicize the broken state of justice in Venezuela and to seek to convince other countries in the region to be more critical. She said the TSJ has done a good job of selling its "official story" by

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channeling international inquiries to its International Relations Secretary. This official, who appears to have more of a public relations role than a protocol function, frequently attends international conferences. Marmol, a

member of the International Association of Women Jurists, is only occasionally able to travel and speak with her regional counterparts, who are usually stunned to hear about what is going on. She also agreed with the opposition's strategy of contesting the BRV's legal measures in Venezuelan court as a springboard for launching appeals in international courts, such as the Inter-American Human Rights Court, and drawing more attention to the absence of judicial freedom in Venezuela.

Comment

¶11. (C) Marmol paints a grim, first-hand view of the increasingly politicized judicial system and extremely limited prospects for fair legal resolutions. Marmol's accounts of intense scrutiny, power plays, and hollowing out of the judiciary track with Chavez' consistent efforts over time to destroy the independence and effectiveness of the other branches of government in this increasingly authoritarian state.

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